

NET  
COMMERCIAL LEASE

BETWEEN:

CORPORATE WOODS LLC d/b/a  
DEERWOOD OFFICE PARK  
(LANDLORD)

AND

ITT EDUCATIONAL SERVICES, INC.  
(TENANT)

FOR

1860 NW 118<sup>th</sup> Street, Suite 110  
Clive, Iowa 50325



## TABLE OF CONTENTS

	PAGE
<u>SECTION 1</u>	<u>BASIC LEASE PROVISIONS</u> 6
Subsection 1.01	Date and Parties 6
Subsection 1.02	Leased Premises 6
Subsection 1.02(a)	Space 6
Subsection 1.03	Use 6
Subsection 1.04	Term 6
Subsection 1.04(a)	Term 7
Subsection 1.04(b)	Substantial Completion 8
Subsection 1.04(c)	Inspection and Punchlist 8
Subsection 1.05	Improvements 9
Subsection 1.05(a)	Construction Costs 10
Subsection 1.05(b)	Satellite Dish 10
Subsection 1.06	Parking 10
<u>SECTION 2</u>	<u>RENT</u> 10
Subsection 2.01	Rent 10
Subsection 2.02	Additional Rent 11
Subsection 2.02(a)	Real Estate Taxes 11
Subsection 2.03	Late Charges 11
<u>SECTION 3</u>	<u>AFFIRMATIVE OBLIGATIONS</u> 12
Subsection 3.01	Compliance with Laws 12
Subsection 3.01(a)	Landlord's Compliance 12
Subsection 3.01(b)	Tenant's Compliance 12
Subsection 3.01(c)	Hazardous Materials and Substances 12
Subsection 3.02	Janitorial, Utilities, and Access 13
Subsection 3.02(a)	Janitorial and Utility Service 13
Subsection 3.02(b)	24 Hour Access 13
Subsection 3.03	Repairs and Maintenance 14
Subsection 3.03(a)	Tenant's Care of Leased Premises 14
Subsection 3.03(b)	Landlord's Repairs and Maintenance 15
<u>SECTION 4</u>	<u>NEGATIVE OBLIGATIONS</u> 15
Subsection 4.01	Alterations 15
Subsection 4.01(a)	Definition 15
Subsection 4.01(b)	Consent 15
Subsection 4.01(c)	Conditions of Consent 15



## TABLE OF CONTENTS cont.

	PAGE
Subsection 4.01(d)	16
Subsection 4.01(e)	16
Subsection 4.02	16
Subsection 4.02(a)	16
Subsection 4.02(b)	17
Subsection 4.02(c)	17
Subsection 4.02(d)	17
 <u>SECTION 5</u>	 <u>INSURANCE</u>
Subsection 5.01	17
Subsection 5.01(a)	17
Subsection 5.01(b)	18
Subsection 5.01(c)	18
Subsection 5.01(d)	18
Subsection 5.01(e)	18
Subsection 5.01(f)	19
Subsection 5.01(g)	19
Subsection 5.02	19
Subsection 5.02(a)	19
Subsection 5.02(b)	19
Subsection 5.02(c)	19
Subsection 5.03	19
 <u>SECTION 6</u>	 <u>LOSS OF LEASED PREMISES</u>
Subsection 6.01	19
Subsection 6.01(a)	19
Subsection 6.01(b)	19
Subsection 6.01(c)	20
Subsection 6.01(d)	20
Subsection 6.01(e)	20
Subsection 6.01(f)	21
Subsection 6.02	21
Subsection 6.02(a)	21
Subsection 6.02(b)	21
Subsection 6.02(c)	21
Subsection 6.02(d)	21
Subsection 6.02(e)	21
Subsection 6.02(f)	21
Subsection 6.02(g)	21



## TABLE OF CONTENTS cont.

	PAGE
<u>SECTION 7</u>	<u>DEFAULT</u> 22
Subsection 7.01	Tenant Default 22
Subsection 7.02	Landlord's Remedies 22
Subsection 7.02(a)	Remedies 22
Subsection 7.02(b)	Attorney's Fees and Costs 24
Subsection 7.02(c)	Waiver of Tenant Default or Remedy 24
Subsection 7.02(d)	Mitigation 24
Subsection 7.03	Landlord Default 24
Subsection 7.04	Survival 24
<u>SECTION 8</u>	<u>NONDISTURBANCE</u> 25
Subsection 8.01	Liens and Nondisturbance 25
Subsection 8.02	Estoppel Certificate 25
Subsection 8.02(a)	Obligation 26
Subsection 8.02(b)	Remedy 26
Subsection 8.03	Quiet Possession 26
<u>SECTION 9</u>	<u>LANDLORD'S RIGHTS</u> 26
Subsection 9.01	Covenants 26
Subsection 9.01(a)	Covenants for 27
Subsection 9.01(b)	Conflict with Lease 27
Subsection 9.01(c)	Enforcement 27
Subsection 9.02	Mechanic's Liens 27
Subsection 9.02(a)	Discharge Lien 27
Subsection 9.02(b)	Landlord's Discharge 27
Subsection 9.03	Right to Enter 27
Subsection 9.03(a)	Permitted Entries 28
Subsection 9.03(b)	Entry Conditions 28
Subsection 9.03(c)	Interference with Tenant 28
Subsection 9.04	Holdover 28
Subsection 9.05	Signs 28
Subsection 9.05(a)	Permitted Signs 28
<u>SECTION 10</u>	<u>OPTIONS</u> 29
Subsection 10.01	Option to Extend 29
Subsection 10.01(a)	Option 29
Subsection 10.01(b)	Conditions 29



## TABLE OF CONTENTS contd.

		PAGE
<u>SECTION 11</u>	<u>MISCELLANEOUS</u>	31
Subsection 11.01	Broker's Warranty	31
Subsection 11.02	Notices	31
Subsection 11.03	Place of Payment	31
Subsection 11.04	Partial Invalidity	32
Subsection 11.05	Waiver	32
Subsection 11.06	Binding on Successors	32
Subsection 11.07	Governing Law	32
Subsection 11.08	Lease Not an Offer	32
Subsection 11.09	Survival of Remedies	32
Subsection 11.10	Authority of Parties	32
Subsection 11.11	Business Day	32
Subsection 11.12	Captions	32
Subsection 11.13	Time	32
Subsection 11.14	Counterparts	32
Subsection 11.15	Entire Agreement	32
Subsection 11.16	Definition of Lease	33
	 <u>EXHIBITS</u>	
Exhibit A	Plans and Specifications	
Exhibit B	Legal Description of Project	
Exhibit C	Site Plan Depicting Common Areas	
Exhibit D	Nondisturbance Agreement	
Exhibit E	Signs	
Exhibit F	Zoning Letter	
Exhibit G	Rules	



## SECTION 1 – BASIC LEASE PROVISIONS

**1.01. Date and Parties.** This lease ("Lease") is made August 23, 2007, between Corporate Woods LLC d/b/a Deerwood Office Park ("Landlord") and ITT Educational Services, Inc. ("Tenant"). Landlord is a limited liability company, organized under the laws of Iowa, with principal offices at 1820 NW 118<sup>th</sup> St. Ste 110 Clive, IA 50325 Tenant is a corporation under the laws of Delaware, with principal offices at 13000 North Meridian Street, Carmel, Indiana 46032.

**1.02. Leased Premises.** Landlord leases to Tenant, the space ("Leased Premises"), as identified on the floorplans attached hereto as Exhibit A and made a part hereof (together with Tenant's Architectural Requirements and Specifications also attached in Exhibit A, "Plans and Specifications"). The Leased Premises herein are to be contained within a "Building" located at 1860 NW 118<sup>th</sup> Street, Clive, Iowa on a 20.74 acre site ("Land"). The legal description is specified on Exhibit B attached hereto and made a part hereof (the Land together with the Building may be referred herein as the "Project").

**1.02(a). Space.** Landlord warrants that the Leased Premises contain Fourteen Thousand Two Hundred Sixty-Four (14,264) rentable and Twelve Thousand Five Hundred Twelve (12,512) usable square feet.

**1.02(b). Common Areas.** Tenant and its agents, employees and invitees have the nonexclusive right with others designated by Landlord to the free use of the common areas (for their intended and normal purposes) of the Project for so long as Tenant is renting space within the Project. The common areas for each such Building are identified on Exhibit C attached hereto and made a part hereof, and include without limitation, sidewalks, driveways, and other similar public areas and access ways ("Common Area"). Landlord may change the Common Area, if the changes do not materially or unreasonably interfere with Tenant's access to, or use of, the Premises.

**1.03. Use.** Landlord represents that the current zoning laws allow the Leased Premises to be used as a technical college, general office use, and related lawful support activities (see attached letter from the City of Clive – Identified as Exhibit F) and Tenant shall use the Leased Premises for said uses only, unless Landlord gives its advance written consent to another use. Tenant shall occupy the Leased Premises, conduct its business and control its agents, employees, invitees, and visitors in a lawful and reputable way and so as not to create any nuisance or otherwise interfere with, annoy, or disturb any other tenant in its normal business operations. Tenant shall not commit, or allow to be committed, any waste on the Leased Premises. Notwithstanding anything contained in this Lease to the contrary, if Landlord initiates or supports any action to change the zoning of the Project, or to amend, act, or record any laws, ordinances, regulations, or restrictive covenants which would prohibit the Project from being used for a technical college, general office use, and related support activities, Tenant may, at any time, immediately cancel this Lease by notifying Landlord in writing. The Lease will end on the day specified, and Tenant's obligations under this Lease will cease as of such date.



#### **1.04. Term.**

**1.04(a). Term.** The Lease term shall be three (3) years beginning on the Commencement Date and shall terminate three (3) years following the Commencement Date ("Termination Date"); except as otherwise specified herein. The "Commencement Date" is defined herein to mean the day that all of the following have occurred:

- (i) The appropriate governmental authorities have issued temporary or permanent certificates of occupancy (including zoning approval for use as a technical college) for the Leased Premises, containing no provisions for work to be completed prior to the effectiveness of the certificates. Such authorities will include, without limitation, building inspectors, engineers, state and local fire officials.
- (ii) All of the facilities and systems of the Building serving the Leased Premises are in good operating condition for Tenant's use, including, but not limited to, the air conditioning, heating, lighting, waste supply, and sewage systems. "Operating condition", with respect to air conditioning and heating, shall include balancing, but Landlord shall only be required, at such time, to balance the systems necessary for the current season.
- (iii) The exterior of the building containing the Leased Premises is completed and fully enclosed.
- (iv) The site work is constructed.
- (v) The Improvements are constructed and substantially completed according to the Plans.
- (vi) The Parking Spaces (as defined below) are striped, landscaped and well-lighted.
- (vii) Landlord has cleaned the Leased Premises and otherwise rendered them in new and reasonably unblemished condition, excluding anything caused by Tenant, its agents, servants, contractors or employees. This work will include, without limitation, the following:
  - (1) all tile floors wet mopped, sealed, waxed and buffed;
  - (2) all walls and partitions cleaned and all damaged places filled and touched up;
  - (3) all glass cleaned on both sides;
  - (4) all toilet fixtures cleaned and polished;
  - (5) all trash, dirt and leftover materials removed from the Leased Premises, excluding anything caused by Tenant; and



- (6) all ceramic tile work buffed and the grout sealed.

If the Commencement Date would be a Saturday, Sunday or holiday recognized by either Landlord or Tenant, the Commencement Date shall be the first business day following that Saturday, Sunday, or holiday.

Within thirty (30) days after the Commencement Date, the parties shall confirm in writing the Lease's Commencement Date and Termination Date.

**1.04(b). Substantial Completion.** Landlord shall use its best efforts to substantially complete the Leased Premises on or before February 1, 2008. Substantially complete means:

- (1) completing the Improvements so that (I) Tenant can use the Leased Premises for its intended purposes without material interference to Tenant conducting its ordinary business activities and (II) the only incomplete items are minor or insubstantial details of construction or mechanical adjustments;
- (2) Tenant, its employees, agents, and invitees, have ready access to the Leased Premises and the building in which the Leased Premises is located through the lobby, entranceways, elevators and hallways;
- (3) the decoration, fixtures, and equipment to be installed by Landlord are installed and in good operating order; and
- (4) the Leased Premises are ready for the installation of any equipment, furniture, fixtures, or decoration that Tenant shall install.

**1.04(c). Inspection and Punchlist.** Before the Commencement Date, the parties shall inspect the Leased Premises, have all systems demonstrated, and prepare a punchlist. The punchlist shall list:

- (i) incomplete, minor, and insubstantial details of construction;
- (ii) necessary mechanical adjustments; and
- (iii) needed finishing touches.

Landlord shall complete the punchlist items within thirty (30) days after the Commencement Date or if completion reasonably takes longer than thirty (30) days, to commence the work within such period of time and diligently pursue it to completion. Following the Commencement Date, Landlord shall promptly correct, at no cost to Tenant, any latent defects in the Leased Premises, Improvements, and/or construction thereof as they become known, if Tenant notifies Landlord of a defect within sixty (60) days after Tenant first learns of such defect, and provided such defect becomes known within one (1) year of the Commencement Date.



**1.05. Improvements.** Landlord, at its expense, shall construct the Building and shall make interior improvements to the Leased Premises in compliance with the Plans and Specifications ("Improvements") as described in Exhibit A. The Improvements, and the Leased Premises as built and modified according to the Plans and Specifications, shall comply with all applicable laws, ordinances, rules, codes, and regulations of governmental authorities. Landlord shall provide Tenant with a complete set of architectural drawings, no later than October 15, 2007. Tenant must, within seven days of Tenant's receipt of the architectural drawings, approve said architectural drawings in writing. Tenant must, prior to commencement of construction, approve the final complete set of construction drawings as prepared by the Landlord's architect. All construction shall be done in a good workmanlike manner using materials in accordance with the Plans and Specifications and shall not vary in any substantial manner without Tenant's prior written consent. Any changes necessitated by the local municipality due to the municipality's interpretation of the local building code will be made by Landlord at Landlord's exclusive cost and will not be charged to Tenant in any manner whatsoever. If the Improvements are not completed and if the certificates of occupancy for the Leased Premises as referenced above in Subsection 1.04(b) have not been obtained on or before:

- (i) March 1, 2008, Tenant shall receive, beginning on the Commencement Date, two (2) days of free Base Rent (as defined below) for each day following March 1, 2008 that either (I) such Improvements are not completed or (II) such certificates of occupancy are not obtained; and
- (ii) May 1, 2008, Tenant shall have the right to terminate this Lease by notifying the Landlord in writing of such termination, in which event (I) Landlord shall promptly return any pre-paid rent to Tenant, (II) this Lease shall terminate and (III) neither of the parties will have any further rights or obligations to the other.

Notwithstanding the foregoing, if Landlord's failure to complete the Improvements and obtain the certificates of occupancy is a direct result of strike, lockout, shortage in material, Tenant's acts, or act of God, then the time periods set forth in the immediate preceding sentence shall be delayed until such cause giving rise to the delay ceases to exist; provided, however, if such time periods are delayed for more than one hundred eighty (180) days as a direct result of strike, lockout, shortage in material, or act of God, Landlord or Tenant may immediately cancel this Lease upon written notice delivered to the other party.

**1.05(a). Construction Costs.** The Improvements for the Leased Premises as shown on the Plans and Specifications will be provided by Landlord at its sole cost and expense except that Sixty-Five Thousand Dollars (\$65,000.00) shall be paid by Tenant to Landlord for such Improvements within thirty (30) days after a temporary or permanent certificate of occupancy is issued by the appropriate government authority. The Improvements include all work set forth in Exhibit A, including costs such as permit fees, architect's and engineer's fees, a supervision/construction management/overhead/profit fee, complete HVAC system, fire sprinkler system, mini-blinds, walls, ceilings, lighting, floor coverings, doors, electrical work and interior plumbing.

**1.05(b). Satellite Dish.** N/A



**1.06. Parking.** Throughout the term of the Lease (including any extensions and renewals), Tenant shall have the right to use, on a non-exclusive basis, eight (8) parking spaces adjacent to the Leased Premises for each one thousand (1,000) rentable square feet of leased space from 5:30 p.m. to 11:00 p.m. nightly and four (4) spaces adjacent to the Leased Premises for each one thousand (1,000) rentable square feet of space at all other times. All of such parking spaces are collectively referred to herein as the "Parking Spaces." The Parking Spaces shall include at all times four (4) "visitor" spaces for Tenant next to the visitor entrance of the Building. Tenant's employees, students and invitees will be entitled to use the Parking Spaces free of charge at all hours, seven (7) days a week. If Landlord reduces the number of Parking Spaces available for Tenant's use by ten percent (10%) or more, such reduction will constitute a material breach of this Lease by Landlord. Landlord shall, in addition to and independent of the Improvements allowances discussed above in Subsection 1.05, provide Tenant with the Parking Spaces at Landlord's sole cost and expense, including, without limitation, the cost to grade, pave, stripe, landscape and light the Parking Spaces.

## **SECTION 2 – RENT**

**2.01. Rent.** Beginning on the Commencement Date, Tenant shall pay to Landlord Base Rent for the original specified term of the Lease as follows ("Gross Rent"):

<u>Lease Period</u>	<u>Annual Gross Rent Per Rentable Square Foot During Period</u>	<u>Total Monthly Gross Rent</u>	<u>Total Annual Gross Rent</u>
Months 1 through 36	\$18.80	\$22,346.93	\$268,163.20

The Gross Rent shall be paid:

- (i) in monthly installments equal to one-twelfth ( $1/12^{\text{th}}$ ) of the product of the applicable annual Gross Rent per rentable square foot multiplied by the number of rentable square feet in the Leased Premises;
- (ii) without advance notice, demand, offset or deduction, unless the offset or deduction is made by Tenant as permitted herein or to recover any unpaid (nonappealable) court judgment Tenant has against Landlord;
- (iii) in advance by the first day of each month during the Lease term; and
- (iv) to Landlord at its address specified below in Subsection 11.02, or as Landlord may hereafter specify in writing to Tenant.

If the Commencement Date is not on the first day, and/or the Termination Date is not the last day of a month, the Base Rent for that partial month will be prorated on a per diem basis.

**2.02. No Additional Rent.** The Gross Rent includes Tenant's share of real estate taxes for the Project. There shall be no pass through of real estate taxes and no pass through of any other expenses to Tenant during the Lease Term or any extension thereof.

**2.03. Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rental shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of which



will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, personnel costs, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Leased Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord within five (5) business days after written notice of the date when it was due, Tenant shall pay to Landlord a late charge equal to the greater of Fifty Dollars (\$50.00) or five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

### **SECTION 3 – AFFIRMATIVE OBLIGATIONS**

#### **3.01. Compliance With Laws.**

**3.01(a). Landlord's Compliance.** Landlord shall, on the Commencement Date and at all times thereafter throughout the Lease term (including any extension of the Lease term pursuant to the terms hereof), keep the structural components of the Building in compliance with all current and future applicable laws, ordinances, rules, regulations, and guidelines of state, federal, municipal, and other governmental authorities, relating to the use, condition, and occupancy of the Project, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Act, and the Americans with Disabilities Act ("Applicable Laws"). During the Lease term, Landlord shall comply with all Applicable Laws regarding the Leased Premises and Project, except to the extent Tenant must comply under Subsection 3.01(b) below.

**3.01(b). Tenant's Compliance.** Tenant shall comply with all Applicable Laws that relate to the Leased Premises.

#### **3.01(c). Hazardous Materials and Substances.**

- (i) Landlord represents and warrants to the best of its knowledge to Tenant that:
  - (1) The Leased Premises is on the date hereof, and shall be on the Commencement Date, in compliance with all applicable federal, state, and local laws, rules, regulations, and guidelines pertaining to hazardous, toxic, or infectious materials or substances.
  - (2) The building in which the Leased Premises are located will not contain any friable asbestos, asbestos containing fireproofing or insulation materials, or ventilation systems containing asbestos.
  - (3) There are no storage tanks presently located in, on, or under the Premises and there currently exists no contaminated soil on the Leased Premises.



- (4) The Leased Premises have been tested for the presence of radon gases and there currently exists no radon emissions in excess of EPA standards in or affecting the Leased Premises.

Tenant shall have the right to immediately terminate this Lease upon thirty (30) days' written notice to Landlord, if any of Landlord's representations and warranties set forth above are false or incorrect in any respect that creates a material risk to the health or safety of occupants of the Leased Premises, unless Landlord diligently proceeds to correct or remedy an environmental problem and does correct or remedy the problem within the time required by applicable governmental authorities and Applicable Laws.

- (ii) Tenant shall not keep in the Leased Premises, Common Area, or building in which the Leased Premises are located, or allow the presence of, any hazardous, toxic, or infectious materials, except for common office machine fluids, and office cleaning supplies ("Hazardous Substances"). If, with Landlord's consent, Tenant allows Hazardous Substances on the Leased Premises or Project, Tenant shall:
- (1) Comply with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers of such Hazardous Substances.
  - (2) Submit to Landlord true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities.
  - (3) Within fifteen (15) days of Landlord's request, submit written reports to Landlord regarding Tenant's use, storage, treatment, disposal, or sale of such Hazardous Substances and provide evidence satisfactory to Landlord of Tenant's compliance with the applicable government regulations.
  - (4) Allow Landlord or Landlord's agent or representative to enter the Leased Premises at all reasonable times to determine Tenant's compliance with all applicable governmental regulations regarding such Hazardous Substances.
  - (5) Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, treatment, and disposal of such Hazardous Substances.

### **3.02. Janitorial, Utilities, and Access.**



**3.02(a). Janitorial and Utility Service.** Landlord shall provide and pay for all utility services with respect to the Leased Premises, including electricity, gas, water and sewer. Tenant shall provide and pay for the cost of all janitorial services with respect to the Leased Premises.

**3.02(b). 24 Hour Access.** Tenant, its employees, agents, and invitees shall have complete access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week. Landlord may not limit access into primary common area entries by using access cards, code generated access boxes or similar devices, except between the hours of 11 p.m. and 6 a.m. Landlord may temporarily close the Leased Premises if required because of a life threatening or building threatening situation. Landlord shall use its best efforts to close the Building during nonbusiness hours only. If, however, the Building must be closed during business hours due to a unilateral closing by Landlord or a closing which is the result of a negligent act of Landlord, then the Base Rent and all additional rent will abate during any closing that lasts more than forty-eight (48) hours.

**3.03. Repairs and Maintenance.**

**3.03(a). Tenant's Care of Premises.**

- (i) Tenant shall keep the Leased Premises occupied by Tenant in good, clean and sanitary condition at Tenant's expense (except for those parts for which Landlord is expressly responsible under this Lease). Landlord shall only be responsible for the repair and maintenance described in Subsection 3.03(b) below.
- (ii) Except as provided below in Subsection 3.03(b), Tenant shall also make all necessary repairs to the Leased Premises occupied by Tenant (including, without limitation, all interior glass, replacing electric light lamps or tubes, doors, any special office entry, interior walls and finish work, floors and floor coverings, interior plumbing, and fixtures other than breakage of common sewage lines which are located outside of the building) except to the extent that the repairs:
  - (1) are or should be covered by Landlord's Insurance; or
  - (2) are needed because of Landlord's misuse or primary negligence.
- (iii) Tenant shall not damage or disturb the integrity and support of any perimeter wall of the Premises. Any damage to these perimeter walls caused by Tenant or its employees, agents or invitees will be promptly repaired by Tenant at its sole cost and expense.
- (iv) Subject to any Improvements and/or Alterations (as defined below) made by Tenant pursuant to the terms of this Lease, Tenant will, at the termination of this Lease, deliver the Leased Premises "broom clean" to Landlord in the same good order and condition as existed at the Commencement Date, except for (I) ordinary wear and tear incidental to such Leased Premises' use as a



technical college, (II) condemnation, and (III) damage arising from any cause not required to be repaired or replaced by Tenant hereunder.

- (v) Tenant shall repair and pay for all damage caused by the negligence of Tenant, Tenant's employees, agents, or invitees, or a Tenant Default (as defined below).

**3.03(b). Landlord's Repairs and Maintenance.** It is intended by the parties hereto that Landlord have no obligation, in any manner whatsoever, to repair and maintain the Leased Premises, the Improvements located thereon, or the equipment therein, all of which obligation is intended to be that of the Tenant, except as follows:

- (1) Landlord shall make repairs and replacements to the roof;
- (2) Landlord shall conduct all maintenance and make all repairs to the HVAC system;
- (3) Landlord shall repair or replace any structural defect which is found in the walls, the foundation or the floor, or the structure of the window frames, which compromises or weakens such structural component and affects the safety or integrity of the structure;
- (4) Landlord shall repave parking lot or portions thereof if there are any major (wider than ¾") structural cracks or deterioration unless due to failure of maintenance by Tenant;
- (5) Landlord shall be responsible for any exterior painting, if needed;
- (6) Landlord shall maintain and pay for maintenance and repairs of interior and exterior Common Areas, the Common Area large trash receptacle in parking area, interior and exterior Common Area utilities including parking lot lighting, Common Area landscaping, roof, parking area and sidewalks, snow and ice removal, interior and exterior water and sewer, fire alarm system and fees, exterior window washing twice each year, all management fees, and all association fees; and
- (7) Tenant shall do no act or omission which violates any condition of a warranty and which would prevent the enforcement against the maker thereof.

## **SECTION 4 – NEGATIVE OBLIGATIONS**

### **4.01. Alterations.**

**4.01(a). Definition.** "Alterations" means alterations, additions, Tenant finish work, installations, improvements, or other physical changes, but excludes decorations and the Improvements Landlord is to make under Subsection 1.05 above.



**4.01(b). Consent.** Tenant shall not make Alterations without Landlord's advance written consent. Landlord's consent shall not be unreasonably withheld or delayed for nonstructural Alterations to the Leased Premises proposed to be made by Tenant to adapt the Leased Premises for Tenant's business purposes.

**4.01(c). Conditions of Consent.** Landlord may condition its consent in Subsection 4.01(b) above on all or any part of the following:

- (i) Alterations shall be made by contractors or mechanics approved by Landlord, and such approval shall not be unreasonably withheld or delayed by Landlord.
- (ii) Tenant shall submit to Landlord plans and specifications for each proposed Alteration and shall not commence any such Alteration without first obtaining Landlord's approval of such plans and specifications, and such approval shall not be unreasonably withheld or delayed by Landlord.

**4.01(d). Payment and Ownership of the Alterations.** Alterations made under this Subsection 4.01 shall be at Tenant's expense. The Alterations shall belong to Landlord when this Lease and the last extension term, if any, ends (except for any Alterations which are removable without material damage to the Leased Premises and all such Alterations will remain the Property of Tenant). In addition, Tenant may remove from the Leased Premises its trade fixtures, furniture, equipment, and other personal property, but Tenant shall repair or, at Landlord's option, pay to Landlord the cost of repairing any damage to the Leased Premises caused by such removal. Any replacement of Landlord's property, whether made at Tenant's expense or otherwise, shall be and remain Landlord's property.

**4.01(e). Status of Improvements upon Termination.** Subject to the provisions of Subsection 4.01 of the Lease, upon termination of the Lease, Tenant shall not be required to remove or pay for the removal of any improvements (including wiring and voice/data cabling) to the Premises, either constructed by Landlord or Tenant, existing on the date of this Lease, or authorized in the future by Landlord.

#### **4.02. Assignment and Subleasing.**

**4.02(a). Consent Required.** Tenant shall not transfer, mortgage, encumber, assign, or sublease all or part of the Leased Premises without Landlord's advance written consent, which consent shall not be unreasonably withheld or delayed by Landlord.

**4.02(b). Procedure.** Tenant shall provide Landlord, in writing, with:

- (i) the name and address of the proposed subtenant or assignee;
- (ii) the nature of the proposed subtenant's or assignee's business that will be operated on the Leased Premises;
- (iii) the terms of the proposed sublease or assignment; and



- (iv) reasonable financial information so that Landlord can evaluate the proposed subtenant or assignee.

Landlord shall within thirty (30) business days after receiving the above information, give notice to Tenant to permit or deny the proposed sublease or assignment. If Landlord denies consent, it must give the reasons for the denial. If Landlord does not give notice within the thirty (30) business day period, then Tenant may sublease or assign part or all of the Leased Premises upon the terms specified in the information Tenant gave to Landlord. Landlord shall have the absolute right to deny consent if the net worth of the subtenant/assignee is less than that of the Tenant's net worth on the Commencement Date.

**4.02(c). Affiliates and Subsidiaries.** Notwithstanding Subsections 4.02(a) and (b) above, Tenant may assign or sublease part or all of the Leased Premises without Landlord's consent to:

- (i) any corporation or partnership that controls, is controlled by, or is under common control (i.e. has the same Board of Directors) with Tenant; or
- (ii) any corporation resulting from the merger or consolidation with Tenant or to any entity that acquires all of Tenant's assets as a going concern of the business that is being conducted on the Leased Premises, as long as the assignee or sublessee is a bona fide entity and assumes the obligations of Tenant hereunder.

**4.02(d). Conditions.** Subleases and Assignments by Tenant are also subject to the following conditions:

- (i) the sublessee or assignee will be bound to the terms of this Lease;
- (ii) the Lease term will not extend beyond the term provided herein (including exercised extensions or renewals as provided herein);
- (iii) Tenant shall remain liable for all of its obligations under this Lease;
- (iv) consent to one sublease or assignment does not waive the requirement for Landlord's consent to any future assignment or sublease; and
- (v) if a Tenant Default arises and any part of the Leased Premises have been assigned or sublet by Tenant, Landlord may, in addition to any other remedies provided by this Lease or law, collect directly from the assignee or subtenant all rents hereunder due by Tenant. Any direct collection by Landlord from the assignee or subtenant will not be construed, however, to constitute a novation or a release of Tenant from the further performance of its obligations under this Lease.



## SECTION 5 – INSURANCE

### 5.01. Insurance.

**5.01(a). Insurance.** Landlord shall keep the Building in which the Leased Premises are located (including the Improvements) and the Project insured against damage and destruction by fire, hail, windstorm, vandalism, explosion, and other perils, including without limitation, earthquake coverage, in the amount of the full replacement value of such Building and the Project, as the value may exist from time to time. The insurance will include an extended coverage endorsement of the kind required by an institutional lender to repair and restore such Building, the Leased Premises, and the Project. Landlord's insurance carrier shall be licensed in the State of Iowa. Upon written request from Tenant, Landlord shall provide Tenant with written evidence (certificate of insurance) of such insurance coverage.

**5.01(b). Property Insurance.** Each party shall keep its personal property and trade fixtures in the Leased Premises insured in an amount equal to one hundred percent (100%) of the replacement cost of the property and fixtures.

**5.01(c). Use.** Tenant shall not use the Leased Premises in any way which would be hazardous or which would in any way increase the cost of or render void or voidable the insurance required above in Subsections 5.01(a) and (b).

**5.01(d). Liability Insurance.** Tenant shall maintain comprehensive general liability insurance, including public liability and property damage, with a minimum combined single limit of liability of two million dollars (\$2,000,000.00) for personal injuries or deaths of persons occurring in or about the Project and Leased Premises.

**5.01(e). Waiver of Subrogation.** Landlord and Tenant waive and release all rights, claims, demands, and causes of action each may have against the other on account of any loss or damage suffered by (I) Landlord or Tenant (as the case may be), (II) their respective businesses, real properties, and personal properties, (III) the Leased Premises, (IV) the Building in which the Leased Premises are located, or (V) the Project or its contents, which arises from any risk or peril covered by any insurance policy carried by either party but only to the extent of such coverage. Since the above mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party agrees to immediately give to its respective insurance companies written notice of the terms of such mutual waivers and to have their respective insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

**5.01(f). Insurance Criteria.** Insurance policies required by this Lease shall:

- (i) be issued by insurance companies with general policyholder's ratings of at least A and a financial rating of at least XI in the most current Best's Insurance Reports available on the Commencement Date. If the Best's



ratings are changed or discontinued, the parties will agree to an equivalent method of rating insurance companies;

- (ii) provide that the insurance not be canceled or materially change in the scope or amount of coverage, unless thirty (30) days' advance notice is given to the nonprocuring party;
- (iii) be permitted to be carried through a "blanket policy" or "umbrella" coverage;
- (iv) be maintained during the entire Lease term (including any extension terms); and
- (v) provide that Tenant is responsible for any deductible obligation.

**5.01(g). Evidence of Insurance.** Tenant shall give certificates of insurance to the Landlord upon occupancy. The certificate will specify amounts, types of coverage and the insurance criteria specified in this Subsection 5.01.

## **5.02. Indemnification.**

**5.02(a). Tenant's Indemnity.** Tenant indemnifies, defends, and holds Landlord harmless from claims for personal injury, death, or property damage occurring in or about the Leased Premises, the Building in which the Leased Premises are located, or the Project that are caused by the negligence or willful misconduct of Tenant, its agents, employees, or invitees.

**5.02(b). Landlord's Indemnity.** Landlord indemnifies, defends, and holds Tenant harmless from claims for personal injury, death, or property damage occurring in or about the Leased Premises, the Building in which the Leased Premises are located, or the Project that are caused by the negligence or willful misconduct of Landlord, its agents, employees, or invitees.

**5.02(c). Release of Claims.** Notwithstanding Subsections 5.02(a) and (b) above, the parties release each other from any claims either party ("Injured Party") has against the other. This release is limited to the extent the claim is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry under Subsection 5.01 above, whichever is greater and provided that such policy is, in fact, in effect at the time of the injury or damage.

**5.03. Transfer of Leased Premises.** Landlord may transfer and assign, in whole or in part, its rights and obligations with respect to the Project and the Leased Premises. If the Project or Building in which the Leased Premises are located is sold or transferred (whether voluntarily or involuntarily), Landlord's obligations and liabilities under this Lease which accrue after the transfer will be the sole responsibility of the new owner.

## **SECTION 6 – LOSS OF PREMISES**

### **6.01. Damages.**

**6.01(a). Definition.** "Relevant Space" means:



- (i) the Leased Premises as defined in Subsection 1.02 above;
- (ii) access to the Leased Premises;
- (iii) any part of the Building in which the Leased Premises are located or the Project that provides services to the Leased Premises; and
- (iv) the Parking Spaces.

**6.01(b). Repair of Damage.** If the Relevant Space is damaged in part or whole from any cause and the Relevant Space can be substantially repaired and restored within two hundred ninety (290) days from the date of the damage using standard working methods and procedures, Landlord shall promptly and diligently repair and restore the Relevant Space to substantially the same condition as existed before the damage provided that such repair or restoration is totally funded by insurance proceeds (excluding any deductible). If insurance proceeds are not sufficient to fund repair and restoration, Landlord shall have the option to cancel this Lease. This repair and restoration will be made within two hundred ninety (290) days from the date of the damage, unless the delay is due to causes beyond Landlord's control. Nevertheless, if the Relevant Space is not repaired and restored within three hundred sixty-five (365) days from the date of the damage, then Tenant may cancel this Lease at any time thereafter by giving written notice to Landlord. If the Relevant Space cannot be repaired and restored within the two hundred ninety (290) day period, either party may cancel this Lease by giving written notice to the other party. Tenant shall not be able to cancel this Lease if its willful misconduct causes the damage, unless Landlord is not promptly and diligently repairing and restoring the Relevant Space.

**6.01(c). Abatement.** Unless the damage is caused by Tenant's negligent or willful misconduct, the Base Rent and the Real Estate Taxes shall abate in proportion to that part of the Leased Premises that is unfit for use in Tenant's business. The abatement shall consider the nature and extent of interference to Tenant's ability to conduct business in the Leased Premises and the need for access and essential services. The abatement shall continue from the date the damage occurs until three (3) business days after (I) Landlord completes the repairs and restoration to the Relevant Space or the part rendered unusable and (II) Tenant receives written notice from Landlord that the repairs and restoration are completed.

**6.01(d). Tenant's Property.** Notwithstanding anything to the contrary in this Subsection 6.01, Landlord is not obligated to repair or restore damage to Tenant's trade fixtures, furniture, equipment, or other personal property.

**6.01(e). Damage to Building.** Landlord may cancel this Lease, if:

- (i) more than fifty percent (50%) of the Leased Premises, Building in which the Leased Premises are located or the Project is damaged and the Landlord decides not to repair and restore the same;



- (ii) any lienholder of the Leased Premises, Building in which the Leased Premises are located, or the Project will not allow adequate insurance proceeds for repair and restoration;
- (iii) the damage is not covered by the insurance required by Subsection 5.01(a) and (b) above; or
- (iv) this Lease is in the last twelve (12) months of its Term.

To cancel this Lease for any of the above reasons, Landlord must give notice to Tenant within fifteen (15) days after the Landlord knows of the damage. The notice must specify the cancellation date, which will be at least one hundred eighty (180), but not more than two hundred seventy (270) days after the date such notice is received by Tenant.

**6.01(f). Cancellation.** If either party cancels this Lease as permitted by this Subsection 6.01, then this Lease shall end on the day specified in the cancellation notice, and all of Landlord's and Tenant's obligations except for any uncured default by either party under this Lease shall cease as of such date.

## **6.02. Condemnation.**

**6.02(a). Definitions.** The terms "eminent domain", "condemnation", "taken", and the like in this Subsection 6.02 include takings for public or quasi-public use and private purchases in place of condemnation by any authority authorized to exercise the power of eminent domain.

**6.02(b). Entire Taking.** If all of the (I) Leased Premises, (II) Building in which the Leased Premises are located, (III) Project, (IV) Land, or (V) Parking Spaces required for reasonable access to, or use of, the Leased Premises are taken by eminent domain, this Lease shall automatically terminate on the date title vests.

**6.02(c). Partial Taking.** If the taking of a part of the (I) Leased Premises, (II) Building in which the Leased Premises are located, (III) Project, (IV) Land, or (V) Parking Spaces prevents Tenant from continuing its business operations in substantially the same manner and space then Tenant may terminate this Lease on the date title vests. If there is a partial taking as to the usable square footage of the Building and this Lease continues, then the Lease shall end as to the part taken, and the Gross Rent shall abate in proportion to the part of the Leased Premises taken.

**6.02(d). Cancellation by Landlord.** If title to a part of the Building in which the Leased Premises are located (other than the Leased Premises) is condemned, and in the Landlord's reasonable opinion, such Building should be restored in a manner that materially alters the Leased Premises, Landlord may cancel this Lease by giving notice to Tenant. Cancellation notice shall be given within sixty (60) days following the date title vested. This Lease shall end on the date specified in the cancellation notice, which date will be at least six (6) months after the date notice is given. Tenant shall not be entitled to claim any damage for Loss of Lease value or value of the Lease estate pursuant to Iowa law.



**6.02(e). Rent Adjustment.** If the Lease is canceled as provided above in Subsections 6.02(b) or (c), then the Gross Rent will be payable up to the cancellation date and will account for any abatement.

**6.02(f). Repair.** If the Lease is not canceled as provided above in Subsections 6.02(b) or (c), then Landlord at its expense will promptly repair and restore the (I) Leased Premises, (II) Building in which the Leased Premises are located, (III) Project, (IV) Land, and (V) Parking Spaces to the condition that existed immediately before the taking (except for the part taken).

**6.02(g). Awards and Damages.** In the event of any partial or entire taking of the (I) Leased Premises, (II) Building in which the Leased Premises are located, (III) Project, (IV) Land, or (V) Parking Spaces, Landlord and Tenant shall each be entitled to receive any sums separately awarded to each party by the condemning authority. If an award is given to Landlord and the sum includes Tenant's award (as further defined below), then Landlord upon receipt shall give such sum to Tenant. Notwithstanding anything to the contrary in this Subsection 6.02(g), Tenant may claim and recover from the condemning authority a separate award for (I) Tenant's business dislocation damages, (II) Tenant's personal property and fixtures, and (III) the unamortized costs of Improvements and Alterations. Tenant shall not be entitled to claim any damage for loss of Lease value or value of the Lease estate pursuant to Iowa law.

## **SECTION 7 – DEFAULT**

**7.01. Tenant Default.** Each of the following constitutes a default by Tenant under this Lease ("Tenant Default"):

- (i) Tenant's failure to pay when due any amounts owed Landlord under this Lease within five (5) business days after Tenant receives written notice from Landlord that any such amount is past due.
- (ii) Tenant's failure to perform or observe when due any other Tenant obligation under this Lease within ten (10) days after Tenant receives written notice from Landlord that any such performance or observance is past due.
- (iii) Tenant's failure to vacate or stay any of the following within ninety (90) days after they occur:
  - (1) a petition in bankruptcy is filed by or against Tenant;
  - (2) Tenant is adjudicated as bankrupt or insolvent;
  - (3) a receiver, trustee, or liquidator is appointed for all or a substantial part of Tenant's property; or
  - (4) Tenant makes an assignment for the benefit of creditors.



- (iv) Tenant commits any act resulting in a lien being filed against the Leased Premises, and Tenant fails to discharge the lien pursuant to Subsection 9.02(a) below within ten (10) days after Tenant receives written notice from Landlord that such a lien has been filed.

## **7.02. Landlord's Remedies.**

**7.02(a). Remedies.** If a Tenant Default arises, Landlord may, with or without terminating this Lease, at its sole election, exercise any one or more of the following remedies:

- (i) Immediately or at any time thereafter re-enter the Leased Premises and correct or repair any condition arising from Tenant's failure to observe or perform any of its obligations under this Lease, and Tenant shall reimburse Landlord within fifteen (15) days after Tenant's receipt of Landlord's statement of expenditures incurred in making such corrections or repairs.
- (ii) Immediately or at any time thereafter demand in writing that Tenant vacate the Leased Premises and, thereupon, Tenant shall vacate the Leased Premises and remove therefrom all property thereon belonging to Tenant within fifteen (15) days of Tenant's receipt of such notice from Landlord. Upon Tenant vacating the Leased Premises, Landlord will have the right to re-enter and take possession of the Leased Premises. Any such demand, re-entry, and taking possession of the Leased Premises by Landlord shall not of itself constitute a termination of this Lease by Landlord.
- (iii) Immediately or at any time thereafter re-enter the Leased Premises and remove Tenant and all property belonging to, or placed on, the Leased Premises by, at the direction of, or with the consent of, Tenant. Any such re-entry and removal by Landlord or any surrender of this Lease or of the Leased Premises by Tenant will not of itself constitute a termination of this Lease or acceptance of surrender by Landlord. A surrender must be agreed to in a writing signed by Landlord and Tenant.
- (iv) At any time after Tenant vacates the Leased Premises, re-let the Leased Premises or any part thereof for such time or times and at such rental or rentals and subject to such other terms and conditions as Landlord desires, and Landlord may make any alterations or repairs to the Leased Premises which it may deem necessary or proper to facilitate such re-letting. In such event, Tenant shall pay the cost of any such repairs to the Leased Premises (other than those which are the responsibility of Landlord hereunder) and any brokerage commissions incurred by Landlord in re-letting the Leased Premises. In addition, if this Lease has not been terminated, Tenant shall continue to pay all Gross Rent up to the date rent begins to accrue to any subsequent lessee of part or all of the Leased Premises, and Tenant shall thereafter pay monthly during the remainder of the Lease term the difference, if any, between (I) the rent and other charges collected from any such subsequent lessee(s) and (II) the Gross Rent, but Tenant shall not be entitled



to receive any excess of any such rents collected over Tenant's obligations hereunder.

- (v) Immediately or at any time thereafter terminate this Lease upon Tenant's receipt of written notice from Landlord of such termination. In the event of such termination, Tenant shall pay all damages Landlord suffers by reason of such termination, including, without limitation (I) all arrearages in Base Rent and Real Estate Taxes (II) the cost (including reasonable attorney's fees) of recovering possession of the Leased Premises or enforcing this Lease, and (III) the cost of any alteration of or repair to the Leased Premises which is necessary to prepare the same for re-letting (excluding such alterations and repairs which are the responsibility of Landlord hereunder). In addition, Landlord at its election may recover from Tenant either:
- (1) an amount equal to the excess, if any, of the total amount of all Gross Rent to be paid by Tenant for the remainder of the Lease term (discounted to present value using a discount rate equal to the prime rate of Chase Manhattan Bank, N.A. in effect on the date of such election) over the fair market rental value (at the time of such election) of the Premises for the remainder of the term of this Lease; or
  - (2) the amounts (payable monthly) which Landlord would be entitled to receive from Tenant pursuant to the provisions of Subsection 7.02(a)(iv) above, if the Lease were not terminated. Landlord will make such election by notifying Tenant in writing of Landlord's election within thirty (30) days of Landlord's notice of termination.

**7.02(b). Attorney's Fees and Costs.** Tenant shall also pay all reasonable attorney's fees and other costs of suit (and appeal, if necessary) incurred by Landlord, if it becomes necessary for Landlord to employ an attorney or other agent to bring suit to (I) collect the Gross Rent due by Tenant hereunder, or (II) enforce any provisions of this Lease.

**7.02(c). Waiver of Tenant Default or Remedy.** Failure of Landlord to notify Tenant of a Tenant Default immediately upon its occurrence or take any action in the event of such Tenant Default, shall not constitute a waiver of such Tenant Default. Landlord shall have the right to declare such Tenant Default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth above in Subsection 7.02(a) shall not preclude pursuit of any one or more of the other remedies provided therein or elsewhere in this Lease or by law or equity.

**7.02(d). Mitigation.** Landlord shall use its best efforts to mitigate its damages in the event of any Tenant Default.

**7.03. Landlord Default.** Landlord's failure to perform or observe any of its Lease obligations within ten (10) days after Landlord receives written notice from Tenant that any such performance or observance is past due is a default under this Lease ("Landlord Default"). If the Landlord



Default cannot be cured within such ten (10) days, Landlord will not be in default of this Lease if Landlord commences to cure the Landlord Default within such ten (10) day period and diligently continues to cure such Landlord Default; provided, however, such Landlord Default must be cured on or before the one hundred twentieth (120<sup>th</sup>) day after Landlord receives such written notice from Tenant. If Tenant brings suit against Landlord for any breach by Landlord of any of its obligations hereunder, and such a breach is determined to have occurred, Landlord shall pay Tenant all costs and expenses incurred by Tenant with respect thereto, including, without limitation, all reasonable attorney's fees. If Landlord is in default under this Lease, Tenant may, without being obligated and without waiving such Landlord Default, cure such Landlord Default. Tenant may enter the Leased Premises or Project to cure such Landlord Default, and Landlord shall pay Tenant, immediately on demand, all costs, expenses and disbursements incurred by Tenant to cure such Landlord Default.

**7.04. Survival.** The remedies permitted by this Section 7, the parties' indemnities in Subsection 5.02 above, and Landlord's obligation to mitigate damages in Subsection 7.02(d) above will survive the termination of this Lease.

## **SECTION 8 – NONDISTURBANCE**

**8.01. Liens and Nondisturbance.** Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust, or other lien now or hereafter recorded or otherwise on the Leased Premises, but only if and upon the execution by each such lienholder of a Nondisturbance and Attornment Agreement in a form similar to the Agreement attached hereto as Exhibit D and made a part hereof. Each mortgage, deed of trust, and other lien recorded on the Leased Premises shall specify and require therein that so long as Tenant performs all of its obligations under this Lease, Tenant's tenancy will remain in full force and effect pursuant to the terms of the Lease, notwithstanding any default by Landlord under such mortgage, deed of trust, or other lien, or any foreclosure, sale, or transfer of the Leased Premises. If the interest of Landlord under this Lease is transferred by reason of foreclosure or other proceedings for enforcement of any lien on the Leased Premises, this Lease shall continue and Tenant will attorn to and recognize the transferee ("Purchaser") under the terms and conditions of this Lease for the balance of the remaining Lease term, including any extensions or renewals, with the same force and effect as if the Purchaser were Landlord under this Lease. Such attornment shall be effective upon Tenant's and Purchaser's execution of a Nondisturbance and Attornment Agreement in a form similar to the Agreement attached hereto as Exhibit D. The respective rights and obligations of Tenant and Purchaser upon the attornment, to the extent of the then remaining balance of the Lease term (including any extensions and renewals), will be and are the same as those set forth in this Lease. Tenant shall have the right to terminate this Lease by giving Landlord sixty (60) days prior written notice, if Landlord fails to provide Tenant with an executed form of Nondisturbance and Attornment Agreement in a similar form attached hereto to Exhibit D from all the current lienholders on the Leased Premises within sixty (60) days prior to occupancy by Tenant. Upon any such termination, Landlord shall reimburse Tenant all prepaid rental, and, thereafter, neither party hereto shall have any further rights or obligations to the other under this Lease.

### **8.02. Estoppel Certificate.**

**8.02(a). Obligation.** Either party ("Answering Party") shall from time to time, within ten (10) business days after receiving a written request from the other party ("Asking Party"), execute and deliver to the Asking Party a written statement. This written statement, which



may be relied on by the Asking Party and any third party with whom the Asking Party is dealing will certify:

- (i) Tenant is in possession of the Leased Premises;
- (ii) the condition of the Leased Premises is acceptable to Tenant;
- (iii) the Lease is unmodified and in full effect or in full effect as modified, stating the date and nature of the modification;
- (iv) whether to the Answering Party's knowledge the Asking Party is in default under this Lease or whether the Answering Party has any claims or demands against the Asking Party and, if so, specifying such default, claim, or demand;
- (v) the current month's rent has been paid, but is not, and shall not be, paid for more than one month in advance; and
- (vi) to other correct and reasonably ascertainable facts that are covered by the Lease terms.

**8.02(b). Remedy.** The Answering Party's failure to comply with its obligation in Subsection 8.02(a) above shall be a default under this Lease by the Answering Party.

**8.03. Quiet Possession.** Landlord warrants that it possesses or shall possess prior to the Commencement Date, good and clean title to the Building in which the Leased Premises are located and the Land, free and clear of all encumbrances.

Landlord warrants and agrees to defend the title to the Leased Premises and to reimburse and hold Tenant harmless from all damages and expenses which Tenant may suffer by reason of any other encumbrance or restriction on, or defect in, such title. Landlord warrants that it has full right to execute and perform this Lease and to grant the leasehold estate demised herein. If there is no uncured Tenant Default, and subject to the Lease terms and the above specified encumbrances, Landlord warrants that Tenant's peaceable and quiet enjoyment of the Leased Premises shall not be disturbed by anyone at any time during the Lease term because of acts or omissions of Landlord subject to the rights of any lender pursuant to the Nondisturbance and Attornment Agreement described in Subsection 8.01 (including any extensions or renewal thereof).

## **SECTION 9 – LANDLORD'S RIGHTS**

### **9.01. Rules and Regulations**

**9.01(a). Rules and Regulations for the Deerwood Office Park.**  
Tenant shall comply with:

- (i) the reasonable rules of the Deerwood Office Park ("Rules") which are attached as Exhibit G in their current form; and



- (ii) reasonable modifications and additions to the Rules adopted by Landlord and received by Tenant in writing that:

- (1) Tenant is given thirty (30) days advance notice;
- (2) do not unreasonably or materially interfere with Tenant's conduct of its business or Tenant's use and enjoyment of the Leased Premises;  
and
- (3) do not require payment by Tenant of any additional monies.

**9.01(b). Conflict with Lease.** If a Rule issued under Subsection 9.01(a) above conflicts with or is inconsistent with any Lease provision, the Lease provision controls. In addition, Landlord expressly permits Tenant to have vending machines within the Leased Premises.

**9.01(c). Enforcement.** Landlord is responsible for another tenant's failure to observe the Covenants. Also, Landlord shall not unreasonably enforce the Rules against Tenant.

**9.01(d). Association Dues.** Tenant will not have any obligation whatsoever to pay any association dues or fees for expenses related to maintenance, repairs, utilities, security and taxes of the Common Area(s).

**9.01(e). No Recorded Covenants.** Landlord represents and warrants that there are no recorded covenants affecting the Project or the business park within which the Project is located.

## **9.02. Mechanic's Liens.**

**9.02(a). Discharge Lien.** Tenant shall, within twenty (20) days after receiving notice of any mechanic's lien for material or work claimed to have been furnished to the Leased Premises on Tenant's behalf and at Tenant's request, except for work contracted by Landlord (including, without limitation, the Improvements):

- (i) discharge the lien; or
- (ii) post a bond equal to the amount of the disputed claim with companies reasonably satisfactory to Landlord.

If Tenant posts a bond, it will contest the validity of the lien. Tenant shall indemnify, defend, and hold Landlord harmless from losses incurred as a result of such liens.

**9.02(b). Landlord's Discharge.** If Tenant does not discharge such lien or post the bond within the twenty (20) day period, Landlord may pay any amounts, including interest and reasonable attorney's fees, to discharge such lien. Tenant shall then be liable to Landlord for the amounts paid by Landlord and shall reimburse Landlord immediately upon written demand thereof.



### **9.03. Right to Enter.**

**9.03(a). Permitted Entries.** Landlord shall have the right, at all reasonable hours with reasonable prior notice of at least twenty-four (24) hours, to enter the Leased Premises for the following reasons:

- (i) inspection, cleaning, or making repairs;
- (ii) making such alterations or additions as Landlord may deem necessary or desirable;
- (iii) installation of utility lines servicing the Leased Premises;
- (iv) determining Tenant's use of the Leased Premises or any other space in the Project; or
- (v) determining if a Tenant Default has occurred.

At any reasonable time during the last six (6) months of the Lease term, Landlord, its agents, and its representatives shall have the right to enter the Leased Premises during Tenant's business hours, without notice to Tenant, for the purpose of showing the Leased Premises and shall have the right to erect on the Leased Premises a suitable sign indicating the Leased Premises are available for lease. Tenant shall arrange to meet with Landlord for a joint inspection of the Leased Premises promptly after Tenant vacates the Leased Premises.

**9.03(b). Entry Conditions.** Notwithstanding anything to the contrary in Subsection 9.03(a) above, entry is conditioned upon Landlord:

- (i) promptly finishing any work for which it entered; and
- (ii) causing the least practical interference to Tenant's business.

**9.03(c). Interference with Tenant.** Notwithstanding anything to the contrary in Subsections 9.03(a) and (b) above:

- (i) if Landlord's entry materially and substantially interferes with the conduct of Tenant's business (and the entry was not required because of Tenant's negligence or willful misconduct), the Base Rent and Real Estate Taxes will abate in proportion to the extent of the interference; and
- (ii) if Landlord causes damage to Tenant's property, Landlord will be liable for any damage to the extent the damage is not covered by Tenant's insurance.

**9.04. Holdover.** If Tenant continues occupying the Leased Premises after the Lease term ends ("Holdover") then:

- (i) If Tenant holds over at the expiration of the Lease term, it shall be a month-to-month tenancy, terminable on thirty (30) days advance notice by either



party, unless otherwise agreed in writing by both parties. All of the terms and provisions of this Lease shall remain enforceable during the Holdover, except that Tenant shall pay one hundred and twenty-five percent (125%) of the Base Rent in the last year of the Lease and the Real Estate Taxes and other Additional Rent owing under the Lease for the term of the Holdover.

No Holdover, whether with or without consent of Landlord, shall operate to extend this Lease, except as otherwise expressly agreed by the parties.

#### **9.05. Signs.**

**9.05(a). Permitted Signs.** No sign, door plaque, advertisement, or notice (collectively ("Signs")) will be displayed, painted or affixed by Tenant on any part of the (I) Project or Building in which the Leased Premises are located, (II) parking facilities, or (III) Leased Premises, without Landlord's prior written consent, which consent will not be unreasonably withheld or delayed. The color, size, character, style, material, and placement of any Signs as illustrated in Exhibit "E" are hereby approved by Landlord. Tenant shall comply with any applicable governmental laws, ordinances, regulations, recorded restrictions, and covenants, conditions and restrictions in the placement of the signs. Landlord warrants that none of the Covenants shall interfere with the Tenant's ability to install the signs illustrated in Exhibit "E". Signs on doors, buildings, and entrances to the Leased Premises, as approved by Landlord, shall be placed thereon by a contractor and paid for by Tenant. Tenant shall remove all such Signs at the termination of this Lease. The installation and removal of each Sign will be made in such a manner as to avoid injury or defacement of the Project and other improvements, and Tenant, at its sole expense, shall repair any such injury or defacement.

### **SECTION 10 – OPTIONS**

#### **10.01. Option to Extend.**

**10.01(a). Option.** Tenant may extend this Lease for a period of five (5) years ("Extension Term") beginning immediately after the Lease term, upon the same terms and conditions of the Lease, except that the rent shall be the then market rate. The market rate shall be determined as follows: Landlord and Tenant shall each hire an appraiser to determine the fair market rental rate and the determinations shall be completed and exchanged within forty-five (45) days after notice by Tenant of exercising its option. If the two values are less than or equal to ten percent (10%) apart, they shall be averaged to determine the fair market rental rate. If the two values are greater than ten percent (10%) apart, the two appraisers shall choose a third appraiser, and such third appraiser shall determine the fair market rental rate within forty-five (45) days of the third appraiser's selection. The three values shall be averaged to determine the fair market rental rate. The determination of the fair market rental rate by each appraiser shall take into account all relevant factors, including allowances, operating expenses, brokerage commissions and other applicable factors. So that all appraisals are consistent, the fair market rental rate determined by each appraiser shall consist of the Base Rent and a tenant improvement allowance for the five-year renewal term. Tenant shall pay the reasonable and customary fees and expenses of all three appraisers. All



appraisers must be MAI certified, licensed in the State of Iowa, and have no less than five (5) years experience appraising commercial real estate in the greater Des Moines, Iowa area.

**10.01(b). Conditions.** To exercise this option to extend Tenant must:

- (i) not have exercised the option to expand as described in Subsection 10.02 below;
- (ii) not be in default of this Lease at the time it exercises the option to extend; and
- (iii) give notice to Landlord that Tenant is exercising its option to extend at least one hundred eighty (180) days before the Lease term ends.

**10.02. Right of First Refusal.** Landlord hereby grants to Tenant a right of first refusal to lease the Qualified Space (as defined below) on and subject to the terms and conditions set forth in this Section. As used herein, "Qualified Space" means any additional space in the building that has not been leased as of the date of this Lease or becomes available during the Term of this Lease. Provided that Tenant is not in default of the Lease, within three (3) business days after Landlord has received an offer to lease the Qualified Space on terms and conditions that are acceptable to Landlord ("Offer"), Landlord shall offer the Qualified Space to Tenant ("Offer Proposal") at the Tenant's upon the same rent, terms and conditions as this Lease, prorating the tenant improvement allowance, and co-terminus. Tenant shall either accept or reject the Offer Proposal in writing to Landlord within ten (10) days of receipt of the Offer Proposal (or be deemed to reject the Offer Proposal). If Tenant does not accept such Offer Proposal, or is deemed to reject the Offer Proposal, Landlord is permitted to enter into a third party lease ("Third Party Lease") for such Qualified Space. In such event, Tenant will be deemed to have waived its right to enter into a lease for the Qualified Space. The rights set forth in this Section are personal to the party executing this Lease and are not assignable or transferable. Upon a permitted assignment or subletting of this Lease, the rights under this Section shall expire and be of no further force and effect. Tenant's rights hereunder are conditioned upon and subject to Tenant's not being in default hereunder during the time the Tenant accepts such Offer Proposal.

## **SECTION 11 – MISCELLANEOUS**

**11.01. Broker's Warranty.** The parties warrant that Sue Clark Real Estate Services and The Siedenbug Group are the only broker they dealt with on this Lease. The party who breaches this warranty shall defend, hold harmless and indemnify the nonbreaching party from all costs, expenses, and/or liability arising from the breach. Landlord is solely responsible for paying the commission to the brokers.

**11.02. Notices.** All notices required or permitted to be given under the provision of this Lease shall be in writing (unless otherwise specified) and shall be deemed duly given, if sent by certified mail, registered mail, or nationwide overnight delivery service, postage prepaid, and, pending written notice to the other of a different address, addressed as follows:



- (i) If to Tenant:  
ITT Educational Services, Inc.  
13000 North Meridian Street  
Carmel, Indiana 46032-1404  
Attention: Director of Real Estate
- (ii) If to Landlord:  
Stanbrough Property Management  
P. O. Box 71637  
Clive, IA 50325  
Attention: Sue Clark

**11.03. Place of Payment.** All payments required hereunder to be made by Tenant to Landlord shall be sent to Landlord at the address set forth above, or any other address Landlord may specify from time to time by prior written notice delivered to Tenant. All payments required hereunder to be made by Landlord to Tenant shall be sent to Tenant at the address set forth above, or at any other address Tenant may specify from time to time by prior written notice delivered to Landlord.

**11.04. Partial Invalidity.** If any Lease provision or its application is invalid or unenforceable, the remainder of this Lease shall not be impaired or affected and shall remain binding and enforceable.

**11.05. Waiver.** The failure of either party to exercise any of its rights hereunder is not a waiver of those rights. A party waives only those rights specified in writing and signed by the waiving party.

**11.06. Binding on Successors.** This Lease is binding on, and inures to the benefit of, the parties' respective heirs, successors, representatives, and permitted assigns.

**11.07. Governing Law.** This Lease is governed by the laws of the state in which the Leased Premises are located.

**11.08. Lease Not an Offer.** Landlord gave this Lease to Tenant for review. It is not an offer to lease. This Lease will not be binding, unless signed by both parties and an originally signed counterpart is delivered to Tenant by August 28, 2007

**11.09. Survival of Remedies.** The parties' remedies will survive this Lease's termination, but only if the termination is caused by a Tenant Default or a Landlord Default.

**11.10. Authority of Parties.** Each party warrants that it is authorized to enter into this Lease, that the person signing on its behalf is duly authorized to execute this Lease, and that no other signatures are necessary.

**11.11. Business Day.** Business days means Monday through Friday, inclusive, excluding holidays recognized by either Tenant or Landlord. Throughout the lease, wherever "days" are used the term will refer to calendar days. Wherever the term "business days" is used, the term will refer to business days.

**11.12. Captions.** The captions inserted in this Lease are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Lease or any provision hereof.



**11.13. Time.** Time is of the essence in the performance of all obligations contained in this Lease.

**11.14. Counterparts.** This Lease may be executed in one or more counterparts, each of which counterparts shall for all purposes be deemed to be an original, but all such counterparts together will constitute only one instrument.

**11.15. Entire Agreement.** This Lease contains the entire agreement between the parties about the Leased Premises and Project, and there are no verbal representations, warranties, understandings, stipulations, agreements, or promises pertaining to this Lease that are not incorporated herein. Except for the Rules for which Subsection 9.01 controls, this Lease may be amended only by a writing signed by both parties.

**11.16. Definition of Lease.** This Lease consists of the following:

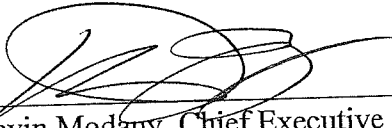
- (i) Title Page;
- (ii) Table of Contents;
- (iii) Sections 1 through 11;
- (iv) Signature Page; and
- (v) Exhibits A through G

[Remainder of Page Intentionally Left Blank]

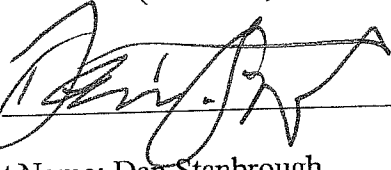


IN WITNESS WHEREOF, Tenant and Landlord, by their duly authorized representatives,  
have caused this Lease to be executed all as of the date first above written.

ITT EDUCATIONAL SERVICES, INC.  
a Delaware corporation  
(Tenant)

By:   
Kevin Modany, Chief Executive Officer

CORPORATE WOODS LLC,  
an Iowa LLC  
(Landlord)

By:   
Print Name: Dan Stanbrough  
Title: Manager